

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. H-97-036-23
	§	
FRED LANDERS HERNDON, JR.	§	

ORDER

The Court has before it a *pro se* motion filed by Defendant Fred Landers Herndon, Jr. seeking modification of his sentence of incarceration under 18 U.S.C. § 3582(c)(2) and the United States Sentencing Guidelines (“U.S.S.G.”) § 2D1.1(c)(2) as amended effective March 3, 2008, the Retroactivity of Crack Cocaine Amendment. *See* Doc. # 1603. The Court has carefully reviewed Defendant’s motion, the applicable law, the applicable U.S.S.G. provisions, and the facts and procedural posture of Defendant’s case. Defendant’s requested relief is denied.


Defendant currently is serving a sentence of 240 months of imprisonment on Counts 167, 168 and 169, in which he was charged with distribution of less than 5 grams of cocaine base in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C), on several occasions. Defendant also is serving a 120 month concurrent sentence on Count 1, charging conspiracy to possess with intent to distribute more than 50 grams of cocaine base in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(A)(iii). These

charges were subject to the statutory enhancement filed by the Government pursuant to 21 U.S.C. § 851, which increased the statutory minimum for Count 1 to 240 months, and increased the maximum statutory penalties on Counts 167, 168 and 169 to 360 months.

At sentencing, the Court held Defendant accountable for 2.12 kilograms of cocaine base. Under the retroactive amendments to U.S.S.G. § 2D1.1, this quantity of cocaine base results in a base offense level of 36. Applying all the same adjustments as in the original sentencing, the total offense level is 36, and Defendant's criminal history category remained I. The guideline imprisonment range is 188 to 235 months, but the Court cannot reduce Defendant's sentence. The statutory minimum required by the § 851 statutory enhancement prevents the sentence from being less than 240 months. It is therefore

ORDERED that Defendant Fred Landers Herndon, Jr.'s Motion for reduction of sentence [Doc. # 1603] is **DENIED**.

SIGNED at Houston, Texas this 14th day of **October, 2008**.



Nancy F. Atlas
United States District Judge